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PAUL REVILLE
SECRETARY OF EDUCATION

October 20, 2009

The Honorable Arne Duncan
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

Dear Secretary Duncan,

I am writing to respond to some of the assertions found in the Alert Memorandum of September 30, 2009 issued by the U.S. Department of Education's Office of the Inspector General, entitled "Potential Consequences of the Maintenance of Effort Requirements under the ARRA State Fiscal Stabilization Fund", and to express my deep concern regarding the process by which the alert was researched, developed and disseminated.

We feel strongly that we have complied with both the letter and spirit of the law as written, and are frustrated to find that a report has been written in which we were offered no opportunity for participation or rebuttal. These funds were intended to be used and were in fact used to save jobs in the field of education. By saving jobs, we prevented the erosion of gains made in education reform during the past decade and more. Thus, we fulfilled the dual intent of the law: save jobs and protect reforms.

We are deeply concerned as well that the method by which this report was disseminated has created much confusion in the media and education field about the intent and language of the law, and allowed the spread of misinformation about the Commonwealth's actions which may do damage to the reforms we have been jointly and diligently pursuing over the last year. As will be shown below, the spending cuts referenced in the memo were made in response to a dire financial situation, and not in response to ARRA or the MOE waiver requirements. They were fairly determined by Governor Patrick in a manner that protected education as a sector compared with much of state government, and were crafted so that cuts would be balanced in our overall strategy with prudent use of reserves and one-time revenues like ARRA. While we originally hoped to use the money to achieve more reforms, the rapidly deteriorating economy made that a less viable strategy, especially because the ARRA does not authorize us to instruct districts as to how to spend the funds. While we are still optimistic that many districts will find ways to make one-time investments that include capacity-building, we would make the argument that using

SFSF funds to fill funding gaps was, and is, one of the key goals of ARRA, and that, by using the fiscal stabilization funds to stabilize local district spending, we have laid the groundwork on which Race to the Top and other more reform-focused funding streams may now build in ways that reduce the achievement gap. We would argue that that was an anticipated goal of ARRA and a legitimate use of the funds, and would strongly urge that states which found it necessary, through no fault of their own, to prevent reductions in education spending should not be penalized for the severity of their recessions by being denied access to future funding opportunities.

Until this moment, all of our contacts, both with your agency and with other federal departments such as the GAO, have been professional, constructive, and collaborative. That is why it was such an unpleasant surprise to hear of this memorandum only through a press inquiry to Governor Patrick's office. To the best of our knowledge, no one in the US ED Office of the Inspector General contacted our office either to make informational inquiries or to ask us our reasoning behind the difficult choices we have made over this past year. This is especially frustrating as a portion of the memorandum includes implications about our motivation and intent that are, quite simply, incorrect. We were especially concerned that the memorandum's section on Massachusetts implies that the Governor only chose to cut the state's K-12 education funding ("Chapter 70") due to the availability of ARRA funds. Additionally, we were puzzled by the unwillingness to research our situation more deeply, as we have been completely forthcoming in response to all inquiries and follow-up questions from US ED; indeed, we have eagerly sought further guidance and assistance from your staff on several occasions, knowing that the SFSF was a new grant program and a "work-in-progress" on which we would need to work in close collaboration with your staff in order to ensure that we used the funds in a way that met the expectations of Congress and US ED while also addressing an unprecedented fiscal crisis in the education sector.

We remain committed to full transparency in all of our communication with you and the public about this important program, and, towards that end, offer the following context and background for all of our decisions in FY09. First, while it is true that two separate reductions were made to the FY09 budget for public institutions of higher learning, as well as a reduction to the fourth quarter payment to local educational agencies under the Chapter 70 program by which we distribute aid to school districts, all of these reductions took place in the context of a rapidly deteriorating revenue picture. The first reduction took place in the late fall of 2008, after the Secretary of Administration and Finance, pursuant to her statutory duties and obligations, certified that revenue collections were far below the benchmarks of the consensus revenue estimate on which the FY09 budget was based. Subsequently, Governor Patrick, pursuant to his statutory responsibilities to maintain a balanced budget, used his authority to reduce expenditures in all line items under the control of the executive branch, and, within those "9C cuts", so-called, was the first round of reductions to IHEs. By the end of December, revenues had again plummeted to the point that a second revision to the consensus revenue estimate was needed, along with a second round of 9C reductions to IHEs. It is important to note that both rounds of 9Cs to IHEs occurred before the passage of ARRA, and that therefore nothing in ARRA or in subsequent federal guidance could possibly have contributed to these decisions.

It is true that, in those first two rounds of reductions, no cuts were made to the Chapter 70 program. First and foremost, this was due to Governor Patrick's strong advocacy and belief that such reductions should only be considered when all other avenues had failed. By January, it was becoming clearer that such a reduction might be needed as a last resort, although we were able to make sufficient reductions at that time to address the expected shortfall. It is worth noting here that the statutory powers allowing the Governor to unilaterally reduce spending in certain items does not apply to independent state authorities, separate constitutional officers, the legislature's accounts, *or local aid* (of which Chapter 70 is one account), unless expressly permitted by the legislature. The Governor requested and received such permission from the legislature in January. As noted, he did not need to use it at that time to reduce local aid, but, in fact, could not have reduced local aid as a matter of law at any earlier time.

The final piece of relevant chronology occurred at the end of the third quarter, when it again became apparent that revenues were continuing to come in below the (now twice reduced) benchmark, and that they were continuing their nosedive throughout April. When revenue reductions continue to be experienced that late in a fiscal year, the Commonwealth's options are sharply limited. Almost all discretionary grants funding has been distributed. Reductions in FTE levels can be, and were, made, but, with more than three quarters of the salary paid out, limited savings can be found in this way. We can draw further from the state's "Rainy Day Fund", but in this case we had already made this fund a part of every solution we proposed and we had seen a reduction in the fund of almost \$1.4B, from \$2.1B at the start of the fiscal year to almost \$766M at its end. (We anticipate a further drop in this fund at the end of FY10 to approximately \$571M.) Further reductions in this account would have been fiscally foolhardy and would likely have triggered negative responses from the public, the business community, and the bond rating agencies alike.

At that time of the fiscal year, the only significant amount of money available for reduction is the fourth quarter local aid payment, made at the end of June. When revenues collapse as quickly as they did in this instance, reductions in local aid, including Chapter 70, simply must be part of the solution, and I can assure you that they would have been part of the solution even in the absence of ARRA's passage. While this cut, unlike the first two, did, in fact, occur after ARRA was passed, it did not occur because ARRA was passed, nor was it an attempt to manipulate the MOE waiver provision, as appears to be alleged in the Alert Memorandum. It was a fiscally responsible action taken in response to an unprecedented fiscal collapse.

It is also worth noting that all three of the reductions above were clearly placed on our initial application, which we revised in response to your staff's constructive recommendations, and which was subsequently approved. At no point in that process were we told of any US ED concerns nor were we given any indication that our reductions might be problematic. We were entirely forthcoming about the reductions we had made, about the MOE waiver we intended to seek for FY10, and about the depth of the revenue loss we were experiencing. It is disheartening to read a report that suggests anything was done inappropriately when no such guidance was ever given to us.

I am aware that the Alert Memorandum does not allege any wrong-doing, nor claim that law was not followed. I am also aware that, wherever possible, the report acknowledged that the

provisions of ARRA “may” or “might” be leading to reductions in expenditure. However, that careful language was undermined by incautious assumptions about our intentions, as well as by a public release that was not similarly precise, and that left a widespread impression that Massachusetts had not complied with the law, either in its letter or in its intent. That impression is both unfair to my office, and potentially injurious to the reform efforts you and I both agree are long overdue. A fairer process would have allowed earlier feedback from the states being reviewed, and some advance notice of the public release of the report. It would also have avoided attributing improper intent where none existed.

Let me also state that I continue to share your commitment to reform, and continue to believe that reducing the achievement gap is at the core of those reforms. I look forward to continuing our joint partnership towards that end. I would be remiss not to share with you, however, my deep concern about any retroactive attempts to penalize states for necessary and unavoidable reductions driven by economic collapse. We, like you, had hoped to be more aggressive in leveraging the SFSF funds for reform. Indeed, early in the process, Mitchell Chester, Commissioner of our state’s Department of Elementary and Secondary Education, instructed districts to use half the SFSF amount for restoration and half for innovation. Districts quickly and correctly pointed out that we had no legal authority to compel that, and, as our crisis worsened, we realized that many districts would not be able to achieve such a perfect split between fund usage. We have continued, however, to urge districts to find a balance that is right for them between the competing needs of ARRA, in particular between the need to retain staff and fill funding holes, and the need to find one-time uses of the funds that will minimize the impact of the funding cliff and be focused on capacity-building. Given the number and diversity of our districts, the statutory limitations on our capacity to compel any particular choices by districts, and the many types of funding streams districts are receiving (ARRA SFSF, ARRA Title I, ARRA IDEA, traditional Title I, traditional IDEA, etc.), we can’t guarantee that those projects with reform impacts will always be funded with SFSF dollars.

Our larger concern, though, is with the premise that these funds are primarily about increasing education aid rather than restoring reductions. This approach seems inconsistent with the history of the SFSF appropriation as we recall it, and may represent an attempt to “over leverage” the funds for reform that will prevent the SFSF funds from being utilized according to their original intent and do harm to larger reform efforts. As you know, Governor Patrick was at the forefront of advocacy efforts on behalf of creating the SFSF, and I and my staff were proud to be part of that effort. During that discussion, however, it was clear at all times that states were making, and would need to continue making, significant reductions in their expenditures, including their expenditures to schools, and that the SFSF would be, to a considerable extent, used to plug those holes, and thus to stabilize school funding to lay the groundwork for the reforms that would come after (e.g., Race to the Top). I know that the provision allowing states to use SFSF funds to implement their funding formulas provides some possibility for increase rather than merely filling holes, and, indeed, it is our current intention to use Phase II SFSF funds, upon receipt, to provide such increases to LEAs in FY10 where needed to keep the LEAs at foundation levels of spending. However, the other two primary uses of the SFSF funds are entirely about filling funding gaps and the mandatory restoration of unavoidable cuts. In that context, it is unsettling to read in the OIG Alert that using the money to restore spending levels could be treated as a violation of the spirit of the law; in the context of continued economic challenge, it seems unfair

to establish a rule that effectively prohibits any reduction in state education spending subsequent to ARRA's passage by penalizing such reductions in further ARRA grant rounds, and I would urge you not to do so.

In particular, I would express my concern over any requirement tying the awarding of Race to the Top funds, or other reform-oriented funds, to data about state spending reductions between FY08 and FY09. In the case of Massachusetts, we experienced a revenue decline of 12.5% in that year, so it would be unusual if spending reductions did not happen in all sectors. I can say, without hesitation, that education as a sector was privileged during that time in Massachusetts and was subject to far fewer reductions than other agencies and sectors. Any expectation that we would be held completely harmless would not only be unrealistic on my part, but would be counter-productive to the children whose needs we are trying to serve. It has been a hallmark of this Governor's approach, and mine as Secretary, to see education reform as more holistic than previously viewed. Insisting on level-funding while shifting more cuts to health and human services or public safety or environmental agencies, would lead to more students entering school hungry, or with unresolved family issues, or untreated mental illness, or no chance at summer jobs, or less protection from gangs and their recruitment. A federal policy that requires states to avoid any reductions to education accounts will inevitably have unintended consequences that keep us just as far from our reform goals as before.

I therefore strongly urge you to continue to allow the SFSF funds to function primarily as a form of budgetary stabilization for states, cities, towns, and school districts which are trying to manage through the overwhelming chaos of this fiscal crisis, and allow our mutual reform hopes and expectations to be driven by the considerable amount of funding that remains to be distributed, especially Race to the Top. I also urge you to distribute the reform-oriented funds not solely to those lucky enough to have avoided reductions, but to those who have made necessary but painful cuts, and are still committed to reforms that help every child succeed.

Please feel free to contact me should you wish to discuss this further. I look forward to our continued collaboration.

Sincerely,



Paul Reville
Secretary of Education
Commonwealth of Massachusetts

Cc: Joseph Conaty, Director, Academic Improvement and Teacher Quality Programs
Joanne Weiss, Director, Race to the Top Fund
Phil Maestri, Director, Risk Management Services
Phil Rosenfelt, Deputy General Counsel, Office of General Counsel
Delores Warner, Audit Liaison Officer, Office of Elementary and Secondary Education